

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN JOSE MARTINEZ-ROLDAN;
JUAN JOSE MARTINEZ-CATALAN,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-75968

Agency Nos. A077-324-683
A095-302-646

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008^{**}

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Juan Jose Martinez-Roldan and his son, Juan Jose Martinez-Catalan, natives
and citizens of Mexico, petition for review of the Board of Immigration Appeals'

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

order dismissing Martinez-Roldan's appeal from an immigration judge's decision pretermittting his application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for substantial evidence, *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006), we grant the petition for review and remand.

An intervening change in the law requires us to remand. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accepts them. *See* 439 F.3d at 619-20; *see also Tapia v. Gonzales*, 430 F.3d 997, 1004 (9th Cir. 2005). There is no indication in the record that Martinez-Roldan was informed of the terms of his departure or that he accepted them knowingly and voluntarily.

The agency "should be given the first opportunity to assess the consequences of [Martinez-Roldan's] departure under the 'knowing and voluntary' standard." *Ibarra-Flores*, 439 F.3d at 620. We therefore grant the petition for review and remand for further proceedings.

PETITION FOR REVIEW GRANTED; REMANDED.